

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

BERNARD ROSS HANSEN and  
DIANE ERDMANN,

Defendants.

NO. CR 18-92RAJ

**GOVERNMENT’S RESPONSE TO  
DEFENDANTS’ MOTION FOR  
JUDGMENT OF ACQUITTAL UNDER  
RULE 29, OR IN THE ALTERNATIVE,  
FOR A NEW TRIAL UNDER RULE 33  
(Dkt. #359)**

At the close of the government’s case-in-chief, Defendants moved for an acquittal under Federal Rule of Criminal Procedure 29. The Court denied these motions. Dkt. #340. After Defendants presented their own trial evidence, after closing argument, and after the jury returned a verdict, Defendants have again moved for a judgment of acquittal. Dkt. #359 (“Defendants’ Motion”). Defendants’ request for acquittal – now a request to overturn the jury’s verdict – should again be denied.

Defendants’ Motion also includes a request for a new trial pursuant to Rule 33; this request should also be denied.

**I. EVIDENCE AT TRIAL**

After an almost four-week trial, Mr. Hansen and Ms. Erdmann were convicted of multiple counts of mail and wire fraud for their years-long scheme to defraud Northwest Territorial Mint (NWTM) customers. The evidence and testimony at trial showed that

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UNITED STATES ATTORNEY  
700 STEWART ST, SUITE 5220  
SEATTLE, WASHINGTON 98101  
(206) 553-7970

Defendants defrauded both NWTM bullion and storage customers by making material misrepresentations and depriving NWTM customers of their money and property.

### **A. Evidence as to bullion customer sales**

The evidence at trial was that Defendants caused false statements to be made to NWTM bullion customers to obtain and to keep those bullion customers' money. At the start of the transaction, former sales employees testified that Mr. Hansen caused them to lie to customers about the delivery times. Hansen required that NWTM sales employees tell bullion customers that their orders would be delivered in 8 to 10 weeks. However, as shown at trial, Defendants knew that was a lie; orders were consistently filled weeks if not months beyond that time frame. Defendants' employees knew this was a lie, too, but some testified that they were afraid of losing their job if they told customers the truth. The evidence at trial showed that Mr. Hansen knew the 8 to 10 weeks promise was material; he refused to change the representation when asked by his employees because he believed NWTM would lose bullion customers if they told customers the truth.

NWTM's sales pitch (developed by Mr. Hansen according to the testimony at trial) directed that sales employees mislead bullion customers into believing their money would be used to purchase their orders. For example, sales employees told customers that as the customer pays "we contract for the metals" and "[t]he day after an order is placed we lock in pricing and send payment to our suppliers for the metals." Trial Exhibits 29, 37. However, as shown at trial, bullion customer money was not designated for a particular order but commingled and used to pay company expenses, to pay Defendants, and to buy precious metal to fill older customer orders. In this way, the evidence showed that Defendants ran the NWTM bullion business like a Ponzi scheme – it was dependent on new customer money to fulfill promises to old customers.

Once the customer money was in the door, in order to keep that customer money, Defendants also made misrepresentations to customers about the status of their bullion order. NWTM sent a form email telling bullion customers that their bullion order would be delayed because of "unprecedented number of orders." *See, e.g.*, Trial Exhibit 200.

1 Employees testified that this additional delay was not unprecedented but routine, and  
2 suggested that this language be changed, but Mr. Hansen refused and persisted in this  
3 misrepresentation. NWTM employees testified that customers were also falsely told that  
4 orders were filled in the order of payment, but in fact, orders were regularly filled out-of-  
5 order when a customer threatened to go to the authorities. Trial Exhibit 144. As another  
6 example of a lie to excuse delay, Ms. Erdmann told one victim, D. J., that the United  
7 States Mint had temporarily stopped making gold buffalo coins.

8 Finally, in order to continue to deprive customers of their money, Defendants lied  
9 about the availability of refunds. NWTM bullion customers were told that they were  
10 entitled to a refund if their bullion order was not timely delivered. At trial, that promise  
11 was shown to be empty. Per former employee testimony, when bullion customers  
12 requested refunds Mr. Hansen directed his employees to try to convince the customers to  
13 wait for their product or to offer customers free additional bullion in exchange for their  
14 agreement to wait (*see* Testimony of victim B.J.). When the bullion customers insisted  
15 on their refund, Mr. Hansen directed his employees to tell customers it took four to six  
16 weeks to send a refund check. To justify this stall tactic, one former NWTM employee  
17 testified that she falsely told customers that NWTM had to sell their metals before they  
18 could return the customer's money. As shown at trial, at any given time in 2016, the  
19 company owed more than \$1 million in refunds. Trial Exhibits 50, 86.

20 At the time NWTM bullion customers placed their orders, Defendants were aware  
21 that the orders could not be fulfilled as promised. In her role as vault manager, Ms.  
22 Erdmann was aware of all bullion orders and when those orders were promised. She  
23 knew what orders were processed for refunds. Hansen had complete control over the  
24 finances and knew that millions of dollars of refunds had been requested but remained  
25 unpaid. But still, Hansen and Erdmann took orders and made promises to obtain and  
26 keep customer money.

27 As a result of Defendants' various lies, Hansen and Erdmann wrongfully obtained  
28 and retained millions of dollars of customer money. At the time Defendants filed for

1 bankruptcy, there were more than \$25 million worth of outstanding bullion orders. Many  
 2 of these orders had been placed in 2015 and had been promised delivery for months. *See*  
 3 Trial Exhibit 60. Other customers were more recently induced to pay into the same  
 4 scheme. Defendants intended to deceive and cheat the bullion customers.

#### 5 **B. Evidence as to storage customers**

6 The evidence at trial showed that Mr. Hansen promised bullion storage customers  
 7 that NWTM would safely store their bullion in NWTM's vaults. Mr. Hansen charged the  
 8 storage customers yearly fees and caused regular storage statements to be mailed or e-  
 9 mailed to storage customers to advise them of their holdings. *See, e.g.*, Trial Exhibits  
 10 260-262, 269-271, 274-275.

11 Despite the promises made to storage customers, the evidence at trial established  
 12 that Defendants stole the customer-owned bullion. Evidence at trial showed that  
 13 customer-owned bullion stored in NWTM vaults was labeled with the storage customer's  
 14 name. Witnesses testified that, at the direction of Ms. Erdmann and Mr. Hansen,  
 15 employees removed customer-owned bullion from the vaults and used it to fill other  
 16 orders. Multiple witnesses testified that they personally removed customer-owned  
 17 bullion from the vault pursuant to a telephone call or an email from Ms. Erdmann. This  
 18 testimony was corroborated by multiple emails admitted as exhibits at trial. *See, e.g.*,  
 19 Trial Exhibits 115-117, 119, 122-124, 147, 151, 526. On other occasions, employees  
 20 observed Ms. Erdmann and Mr. Hansen take customer-owned bullion out of the vault  
 21 themselves.

22 The evidence at trial showed that, by April 2016, a significant amount of the  
 23 storage customer bullion had been removed from the vault and used for other purposes.  
 24 After Defendants left the company, NWTM employees testified that they conducted a  
 25 diligent search for customer-owned metal in NWTM vaults in Federal Way, Auburn, and  
 26 Nevada. In Nevada, former employee Jeff Goodfellow testified that he conducted a  
 27 thorough inventory of the Nevada vault and identified a small amount of customer-owned  
 28 bullion. Across all three locations, the inventories found approximately \$1 million worth

1 of customer-owned stored metal – meaning that \$4.9 million worth of customer stored  
2 metal was missing. *See* Trial Exhibit 493.

## 3 **II. JURY INSTRUCTIONS AND VERDICT**

4 At the close of evidence, the Court instructed the jury as to the elements of wire  
5 and mail fraud. Dkt. #344 at 19-21. At the Defendants’ request, the Court altered the  
6 second element of the Ninth Circuit model jury instruction to remove any reference to  
7 “facts omitted” as part of the scheme. *See* Ninth Circuit Model Criminal Jury Instruction  
8 8.121, 8.124. Further, at Defendants’ request, the Court gave an extra jury instruction  
9 describing the “intent to defraud” element. That instruction stated:

10 To prove that the defendants committed mail fraud or wire fraud, the  
11 government must prove beyond a reasonable doubt that each defendant  
12 acted with the intent to defraud. To prove that a defendant acted with the  
13 intent to defraud, the government must show as to each count that the  
14 defendant acted with the intent to both deceive and cheat. A defendant  
15 must act with the intent not only to make false statements or utilize other  
forms of deception, but also with the intent to deprive a victim of money or  
property by means of those deceptions.

16 Dkt. #344 at 24 (Instruction No. 21).

17 After two days of deliberation, the jury found Defendant Hansen guilty on all  
18 counts as to bullion customers and storage customers (Counts 1, 3-6, 8, 11-16, and 19-  
19 20); the jury acquitted Mr. Hansen of Count 9 relating to lease customer W.H. The jury  
20 found Defendant Erdmann guilty on counts 1, 3-6, 8, 11-14, 16, and 19-20. The jury  
21 acquitted Ms. Erdmann on Count 9 and Count 15 relating to customer S.F.

## 22 **III. DEFENDANTS’ RULE 29 MOTION SHOULD BE DENIED**

23 Federal Rule of Criminal Procedure 29 requires that a trial court, on a defendant’s  
24 motion, and either after the close of the government’s evidence or after all evidence has  
25 been submitted, to enter a judgment of acquittal of any offense for which the evidence is  
26 insufficient to sustain a conviction. Fed. R. Crim. P. 29. A Rule 29 motion should be  
27 denied when there is sufficient evidence to sustain a conviction. “Sufficient evidence is  
28 that which, view[ed] ... in the light most favorable to the prosecution, *any* rational trier of

fact could have found the essential elements of the crime beyond a reasonable doubt.”  
*United States v. Miller*, 953 F.3d 1095, 1108 (9th Cir. 2020) (citation omitted and  
 emphasis in original).

**A. There was sufficient evidence that Defendants had the intent to both deceive  
 and cheat the bullion customer victims**

Defendants’ Motion first contends that there was insufficient evidence of  
 Defendants’ intent to cheat the bullion customer victims and deprive those victims of  
 money or property. Defendants’ Motion at 7-8. There was more than sufficient evidence  
 of this element.

In the *Miller* case, the Ninth Circuit explained that “intent to defraud” for purposes  
 of the wire fraud statute means an intent to both deceive and cheat and so “a defendant  
 must act with the intent not only to make false statements or utilize other forms of  
 deception, but also to deprive a victim of money or property by means of those  
 deceptions.” *Id.* Based on *Miller*, the Court instructed the jury that it must find that  
 Defendants acted with the intent to “deceive and cheat.” Dkt. #344. The instructions  
 further defined intent to defraud, instructing that the “defendant must act with the intent  
 not only to make false statements but also with the intent to deprive a victim of money or  
 property by means of those deceptions.” Dkt. #344.

Viewed in the light most favorable to the prosecution, there was sufficient  
 evidence that Defendants intended to deprive the bullion customer victims of money or  
 property. From the beginning of a bullion transaction, the Defendants made knowingly  
 false statements to lure customers to send money to NWTM. Defendants told customers  
 that they could fulfill bullion orders within 8 to 10 weeks. The evidence at trial showed  
 that Mr. Hansen and Ms. Erdmann knew that they could not meet this deadline. Mr.  
 Hansen recognized how important it was to tell this lie – he refused to let NWTM  
 employees change it because it would mean fewer orders and less money. This deadline  
 was important to make it appear to customers that NWTM was a legitimate business that  
 could timely fulfill orders. Defendants backed up this first lie by telling more lies to keep

1 customer money. Then, Defendants told more lies about their ability to pay a refund  
 2 (e.g., we need to sell your metals first, it will take 4-6 weeks for processing). These  
 3 continued lies demonstrate an intent to deprive customers of their money.

4 The defense that Mr. Hansen and Ms. Erdmann intended to provide customers  
 5 with refunds at some point in the unknown future does not impact the sufficiency of the  
 6 evidence. The law of wire fraud is clear that the victim need not be permanently  
 7 deprived of money or property – this defense was expressly rejected in *Miller*. *Id.* at  
 8 1103 (“this court already considered and rejected the argument that the wire fraud statute  
 9 requires an intent to permanently deprive a victim of money or property”). Rather, *Miller*  
 10 found that the wire fraud statute “requires the intent to deprive a victim of money or  
 11 property, at least momentarily.” *Id.* at 1103 n.10 (emphasis added). Here, there was  
 12 sufficient evidence that Defendants intended to deprive NWTM bullion customers for  
 13 more than a moment, rather customers were deprived of their money for months and  
 14 months, and some customers were permanently deprived.

15 Defendants’ “benefit of the bargain” cases do not change this analysis. *See* Dkt.  
 16 #359 at 7. First, these cases are from other circuit courts and are not binding on the  
 17 Court. Second, these cases are distinguishable on the facts because they involve schemes  
 18 where the victims were not deprived of money or property. *See United States v.*  
 19 *Takhalov*, 827 F.3d 1307, 1314-15 (11th Cir. 2016) (reversing lower court because  
 20 defendant should have been allowed to argue that victims received the items paid for);  
 21 *United States v. Starr*, 816 F.2d 94, 98-99 (2d Cir. 1987) (reversing conviction because  
 22 victims received mailing services); *United States v. Shellef*, 507 F.3d 82, 109 (2d Cir.  
 23 2007) (dismissing indictment because victims received contemplated benefits from sales  
 24 contract). And third, even if the Court were to apply these cases, there was sufficient  
 25 evidence that Defendants’ scheme depended “on a misrepresentation of an essential  
 26 element of the bargain.” Defendants’ Motion at 7 (citation omitted). Indeed, more than  
 27 just an “essential element of the bargain” the evidence showed that Defendants  
 28 misrepresented almost everything about the bargain with the bullion customers.

Defendants misrepresented: 1) their ability to deliver bullion; 2) how they would use customer money; and 3) their ability to pay refunds. The victims testified at trial that these misrepresentations were an essential part of their decision to purchase bullion.

**B. There was sufficient evidence of Defendants’ affirmative misrepresentations and the jury was not instructed to consider omissions.**

Defendants’ Motion next contends that there was insufficient evidence of Defendants’ affirmative misrepresentations to bullion customers and instead the jury must have convicted based on the Defendants’ omissions. Defendants’ Motion at 8-9 (“The government proved only that it might have been helpful to the customer to have additional material facts, not that any affirmative misrepresentations were deceitful”). There was more than sufficient evidence of affirmative misrepresentations.

As discussed extensively above, the evidence showed that Defendants made numerous knowing misrepresentations to bullion customers. Defendants lied about the ability to deliver bullion within 8 to 10 weeks. Defendants lied that customer money was immediately sent to the supplier. Defendants lied to bullion customers about the reasons for delay, including Ms. Erdmann’s lies to victim D.J. about the production schedule of the United States Mint. Defendants lied about the availability of refunds, and some customers were even told that NWTM had to sell their metals before they could return the customer’s money.

Contrary to the suggestion of Defendants’ Motion, the government did not “repeatedly urge[] the jury to find the defendants guilty because of what had not been disclosed to customers.” Defendants’ Motion at 4. Defendants point to a portion of the government’s closing argument that discussed the evidence as to how customer money was actually used by Defendants, that is, to fill earlier customer orders. That argument compared Defendants’ representations to customers with the reality of the NWTM business, in order to demonstrate that Defendants’ representations were false. The argument was not error, but rather a fair comment on the evidence to explain the misleading impression Defendants created. *See United States v. Farrace*, 805 Fed. Appx.

1 470, 473 (9th Cir. 2020) (“We disagree with Farrace’s contention that the government  
 2 tried this case as both an affirmative misrepresentation and an omissions fraud case ...  
 3 [t]he government’s focus throughout the trial was not on Farrace’s silence, but on how he  
 4 created a misleading impression”).

5 Finally, the jury was instructed in this case that it could consider false or  
 6 fraudulent statements, which could include deceitful half-truths. The jury was not  
 7 instructed that it could rely on material omissions as false statements. Dkt. #344.

8 **C. There was sufficient evidence that the Defendants participated in a scheme to**  
 9 **defraud storage customers**

10 Defendants’ Motion next contends that there was insufficient evidence to convict  
 11 Defendants of the storage fraud counts because there was insufficient evidence of a  
 12 shortfall of storage metal. Defendants’ Motion at 9-10. There was significant evidence  
 13 that storage customer bullion was missing.

14 Evidence at trial showed that the storage customers understood that NWTM and  
 15 Mr. Hansen would keep their stored bullion separate and apart from the precious metal to  
 16 be used in the NWTM business. The testimony showed that it was NWTM’s practice to  
 17 maintain customer storage bullion separately, and stored bullion was labeled with the  
 18 customer’s name. Multiple former NWTM employees testified that Ms. Erdmann  
 19 directed that this labeled, customer-owned bullion be removed from the vault and used to  
 20 fill other orders. Employees testified that Mr. Hansen was aware of this practice, and in at  
 21 least one instance, he participated in the practice. Finally, former employees testified that  
 22 the amount of customer-owned bullion dwindled over the years. The results of the post-  
 23 bankruptcy inventory showed that almost \$5 million in customer storage was missing  
 24 from the NWTM vaults.

25 That most of the customer-owned bullion was missing from the NWTM vaults in  
 26 April 2016 was consistent with other evidence at trial. There was extensive testimony  
 27 about how Ms. Erdmann and other NWTM employees scrambled to fill orders to prevent  
 28 irate customers from turning them into the authorities – one way Erdmann was able to fill

1 some orders was by stealing from customer storage. Also, a significant amount of  
 2 missing customer storage is consistent with the evidence at trial as to the financial  
 3 condition of NWTM. The company could not afford to buy gold and silver and instead  
 4 stole storage customers' precious metals. Viewing the evidence at trial in the light most  
 5 favorable to the prosecution, there was a sufficient evidence for a rational jury to find  
 6 Defendants guilty on these counts.

7 In any event, and contrary to Defendants' motion, the jury was not required to  
 8 make a finding as to whether or not there were sufficient storage holdings at any given  
 9 point in time – only that Defendants engaged in a scheme to defraud.

10 **IV. DEFENDANTS' ALTERNATIVE RULE 33 MOTION SHOULD ALSO BE**  
 11 **DENIED**

12 The Court should also deny Defendants' alternative Rule 33 motion for a new  
 13 trial. Federal Rule of Criminal Procedure Rule 33(a) allows a court, on defendant's  
 14 motion, to "vacate any judgment and grant a new trial if the interest of justice so  
 15 requires." A motion for new trial should be granted "only in exceptional cases in which  
 16 the evidence preponderates heavily against the verdict." *United States v. Pimental*, 654  
 17 F.2d 538, 545 (9th Cir. 1981) (citation omitted). A motion for new trial directed to the  
 18 discretion of the trial judge. *Id.*; see also *United States v. Del Toro-Barboza*, 673 F.3d  
 19 1136, 1153 (9th Cir. 2012) (reviewing trial court's denial of motion for new trial and  
 20 noting that "we will only grant the motion in exceptional circumstances in which the  
 21 evidence weighs heavily against the verdict"). A trial court may grant a motion for new  
 22 trial even when there is sufficient evidence to sustain the verdict, but where in the court's  
 23 judgment "a serious miscarriage of justice may have occurred." *United States v. A. Lanoy*  
 24 *Alston, D.M.D., P.C.*, 974 F.2d 1206, 1211-12 (9th Cir. 1992), quoting *United States v.*  
 25 *Lincoln*, 630 F.2d 1313, 1319 (8th Cir. 1980).

26 Defendants' Motion argues that the jury's verdicts were against the weight of the  
 27 evidence. Defendants' Motion at 10-11. As they argued at trial, Defendants claim that  
 28 the evidence did not show intent to defraud, and NWTM was only a failed business:

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UNITED STATES ATTORNEY  
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1 “NWTM bullion customers ultimately lost money ... because NWTM had a flawed  
2 business model.” Defendants’ Motion at 10. However, as described above, there was  
3 abundant evidence that Defendants schemed to defraud the bullion customers, namely by  
4 telling a series of lies to obtain and keep customer money and running the NWTM  
5 business as a Ponzi scheme.

6 Defendants also reiterate their trial argument blaming Mark Calvert for the almost  
7 \$5 million in missing customer storage. Defendants’ Motion at 10. Again, as described  
8 above, there was significant evidence that clearly showed that Defendants themselves  
9 were responsible for poaching customer-owned bullion. The evidence at trial showed  
10 that NWTM employees conducted a thorough inventory of the customer storage after  
11 Defendants left the company and the results of that inventory were supported by the other  
12 evidence in this case.

13 Defendants’ new trial motion, rather than point out a miscarriage of justice, simply  
14 makes the same arguments they made at trial. These arguments were resolved by the jury  
15 against Defendants and in favor of conviction. The weight of the evidence strongly  
16 supported the verdict and the interests of justice do not require a new trial.

17 //

18 //

1 **V. CONCLUSION**

2 The government respectfully requests that the Court deny Defendants' motion for  
3 acquittal pursuant to Rule 29, as well as Defendants' alternative motion for a new trial  
4 pursuant to Rule 33.

5 Dated this 17th day of September 2021.

6 Respectfully submitted,

7  
8 TESSA M. GORMAN  
Acting United States Attorney

9 s/ Brian Werner  
10 BRIAN WERNER  
11 BENJAMIN DIGGS  
Assistant United States Attorneys  
12 700 Stewart Street, Suite 5220  
13 Seattle, Washington 98101  
14 Telephone: (206) 553-7970  
E-mail: [brian.werner@usdoj.gov](mailto:brian.werner@usdoj.gov)